

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:

**PHYLLIS ANNE BROOKS
DEBTOR**

**CASE NO. 08-81399
CHAPTER 13**

**MOTION FOR RELIEF FROM AUTOMATIC STAY OR IN THE
ALTERNATIVE ADEQUATE PROTECTION
{No Protest Motion Pursuant to 11 U.S.C. § 362}**

COMES NOW Wells Fargo Bank, NA (hereinafter “Movant”), a secured creditor in the above-captioned case, by and through counsel, Brock & Scott, PLLC, and moves this Court to enter an order granting its request for relief from the automatic stay imposed by 11 U.S.C. § 362(a) on the following grounds:

1. On September 23, 2008, the Debtor, Phyllis Anne Brooks, filed a petition with the Bankruptcy Court for the Middle District of North Carolina under Chapter 13 of Title 11 of the United States Code. Mr. Richard M. Hutson, II of Durham, North Carolina was appointed Trustee.

2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 1334 and 157.

3. The Debtor holds title to the real property (hereinafter “Collateral”) described in that Deed of Trust recorded in the Durham County Register of Deeds in Book 4745 at Page 637 and recorded on March 31, 2005 (hereinafter “Deed of Trust”) with an address of 211 Hidden Springs Drive, Durham, North Carolina 27703. A copy of the Deed of Trust is attached hereto and is incorporated herein as Exhibit “A”.

4. Movant holds a Promissory Note secured by the Deed of Trust from the Debtor in the original principal amount of \$151,893.00 and dated March 23, 2005 (hereinafter “Note”). A copy of the Note is attached hereto and incorporated herein as Exhibit “B”.

5. The Debtor has scheduled the value of the Collateral at \$157,900.00.

6. Upon information and belief, the approximate payoff due and owing to Movant as of September 1, 2011 is \$157,152.12.

7. As a result of the averments in paragraphs “5” through “6”, insignificant equity exists in the subject property.

8. The plan requires the Debtor to make the monthly mortgage payments to Movant outside of the plan.

9. The Debtor has defaulted in the mortgage payments to be made outside of the plan. Upon information and belief, the amount of default, exclusive of fees and costs, is as follows:

3	payments @	\$	1,136.88	\$	3,410.64
	(7/11 - 9/11)				
5	late charges @	\$	32.61	\$	163.05
	Total Delinquency			\$	3,573.69

10. As a result, Movant lacks adequate protection of its interest in the Collateral. By virtue of such lack of protection, good cause exists to lift the automatic stay imposed hereunder. Otherwise, Movant will suffer irreparable harm with respect to Movant’s interest in the Collateral.

WHEREFORE, Movant prays the Court as follows:

1. Modify the Automatic Stay of Section 362(a) of the Bankruptcy Code to permit Movant to enforce its security interest in the Collateral.

2. Modify Rule 4001(a)(3) of the Bankruptcy Code so that it is not applicable in this case and so Movant may immediately enforce and implement this order granting relief from the automatic stay.

3. As an alternative to the relief prayed for above, grant adequate protection to Movant for its interest in the Collateral.

4. Movant specifically requests permission to communicate with the Debtor(s) and Debtor(s)’ counsel to the extent necessary to comply with applicable nonbankruptcy law.

5. Grant Movant reasonable costs and attorney fees incurred in connection with this proceeding; and,

6. Grant Movant such other and further relief as the Court deems just and proper.

This 1st day of September, 2011.

Brock and Scott, PLLC

/s/ Sean M. Corcoran

Sean M. Corcoran

Attorney for Movant

Brock & Scott, PLLC

5121 Parkway Plaza Drive, Suite 300

Charlotte, NC 28217

(704) 369-0676

Bar No.: 33387

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that he/she is over eighteen (18) years of age and that the MOTION FOR RELIEF FROM AUTOMATIC STAY in the above captioned case were this day served upon the below named persons by mailing, postage prepaid, first class mail a copy of such instrument to each person(s), parties, and/or counsel at the addresses shown below:

Phyllis Anne Brooks
211 Hidden Springs Dr.
Durham, NC 27703

Mr. John T Orcutt
Via electronic notice

Mr. Richard M. Hutson, II
Via electronic notice

This 1st day of September, 2011.

Brock and Scott, PLLC

/s/ Sean M. Corcoran
Sean M. Corcoran
Attorney for Movant
Brock & Scott, PLLC
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Charlotte, NC 28217
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Bar No.: 33387